Submitted Electronically

April 15, 2004

Secretary, Marlene H. Dortch
Office of the Secretary
Room TW-A325
Federal Communication Commission
445 12th Street, SW
Washington, DC 20554

Re: Comments on Revisions to Rules Implementing the Telephone Consumer Protection Act, CG Docket No. 02-278, FCC 04-53

Dear Secretary Dortch:

Countrywide Financial Corporation ("Countrywide") is pleased to submit comments in connection with the revision proposed by the Federal Communication Commission (the "Commission") to Rules and Regulations implementing the Telemarketing Consumer Protection Act ("TCPA") for a limited safe harbor under TCPA and the required frequency for telemarketers to access the national do-not-call registry ("Proposed Rule"). Through its family of companies, Countrywide provides mortgage banking and diversified financial services in domestic and international markets. Notably, Countrywide is affiliated with Countrywide Bank, a division of Treasury Bank, N.A., a national bank regulated by the Office of Comptroller of the Currency ("OCC") offering customers CDs, money market accounts, and home loan products. We appreciate the opportunity to comment on the Proposed Rules as we strive to coordinate our compliance with the TCPA and the Federal Trade Commission's ("FTC") Telemarketing Sales Rule ("TSR") implementing the Telemarketing and Consumer Fraud and Abuse Prevention Act ("the Act").

Countrywide applauds the Commission's efforts to provide consumers with an effective means for controlling unwanted telemarketing solicitations, and we are encouraged by the effectiveness of the Registry in achieving this goal.[1] Countrywide and its family of companies respect a consumer's right not to receive unwanted telemarketing calls. We regularly obtain the National Do Not Call Registry and have a coordinated system and procedures across our family of companies to honor consumers' wishes not to receive telemarketing calls, whether from the Registry or from company-specific requests.

Our comments reflect our strong commitment to protect consumer privacy and our corresponding desire that the Registry truly provide the most effective solution possible to the problems addressed by the Act. We note that consumer satisfaction under

[1] According to a Harris Interactive® survey released February 13, 2004, ninety-two percent (92%) of those who signed up for the National Registry report receiving fewer telemarketing calls, and twenty-five percent (25%) of those registered say they have received no telemarketing calls, since signing up.

the current rule has been almost without precedent and that, as the Commission and the FTC have both noted, the Registry is, to an extraordinary degree, currently protecting consumers as intended. The exceptional compliance rates by industry to date have also been widely recognized.[2]

In response to the Commission's request for comment on whether telemarketers should be required to update their suppression lists monthly rather than quarterly, we note that the Registry, with its current quarterly suppression timeframe, is performing exactly as intended under the Act. Consumers are being protected as effectively as could possibly have been anticipated, businesses almost uniformly have extended themselves to implement processes in time to meet strenuous compliance deadlines, and legislators and regulators are deservedly being applauded for one of the most successful regulatory endeavors in recent memory. This success indicates a resounding lack of need for the proposed change, particularly in light of the extreme burden the proposed change would impose on industry.

Given that Congress has never held a hearing on the impact of shortening the time frame for accessing the list, we strongly urge the Commission to carefully consider alternatives to the FTC's rule that better balance the costs of the proposed rule with anticipated benefits to consumers. As further discussed below, we respectfully recommend that the Commission require businesses to obtain the list in thirty-one (31) days and apply such list within thirty-one (31) additional days. This time frame represents an appropriate balance between the desire for prompt action and the resulting burden on the business community.

In addition, we also believe it imperative for consumers and businesses alike to have a single uniform standard for accessing the Registry. This standard should apply consistently and equitably to both Commission and FTC-regulated entities. However, as we will discuss below, because the FTC's rule imposes significant and undue burden on industry with little corresponding benefit to the privacy rights of consumers, we respectfully request the Commission to adopt the time frame suggested above and then work with Congress and the FTC to make the standard consistent.

Finally, as discussed below, we support the Commission's proposal to adopt a reasonable safe harbor period for auto-dialed and prerecorded messages to recently ported wireless telephone numbers, particularly a safe harbor that provides a reasonable period to obtain and process such data.

1. The Burdens Imposed by a Requirement to Scrub Call Lists Every Thirty-one (31) Days Would Far Outweigh Any Potential Benefits to Consumers

We support the Commission's desire to have consumers' do-not-call requests honored in a reasonable time period. The current rule requires telemarketers to employ a

[2] As has been publicly noted by FTC Chairman Timothy J. Muris, "The telemarketing industry has shown exceptional compliance with the National Do Not Call Registry."

version of the Registry that was obtained "no more than ninety (90) days prior to the date any call is made." Although we believe this should continue to be the standard, Congress (without benefit of a hearing record or Committee mark-up) has directed the FTC in the Consolidated Appropriations Act of 2003 to shorten the period. In our comments to the FTC on its proposed rule (a copy of which was provided to Chairman Powell), we recommended to the FTC that (1) the Commission and the FTC should adopt a consistent rule; and (2) businesses should have thirty (30) days to *obtain* the list and an additional thirty (30) days to *apply* the list obtained. The FTC ultimately adopted a rule requiring businesses to both obtain and use the list within thirty-one (31) days.

We respectfully maintain that our proposal to allow for thirty (30) or thirty-one (31) days to obtain the list and an additional thirty (30) or thirty-one (31) days to apply the list obtained strikes the appropriate balance between the need for expeditious file suppression and reasonable cost burdens on marketers. A requirement to obtain and use the list in thirty (30) or thirty-one (31) days would impose extremely onerous and expensive burdens on all companies, whether large or small. As noted, the business community has largely embraced the do-not-call process. In fact many companies, like Countrywide, already obtain Registry updates on a monthly basis to allow adequate time to ensure that do-not-call telephone numbers are scrubbed within the three month period. However, the FTC's amended rule fails to provide companies with adequate time to both obtain and use the Registry.

The impact of the FTC's final rule, and the Commission's proposed rule, is illustrated by the modifications that Countrywide Bank, the Countrywide entity subject to the Commission's rule, would have to make to its processes to comply. At any given time we may have ten (10) to twenty (20) telemarketing campaigns in process with multiple vendors. These campaigns typically run more than thirty-one (31) days from the date that the telemarketing list was created. To comply, we would be forced to obtain Registry updates more frequently (bi-weekly, weekly, or possibly daily) and implement a method to rescrub campaigns in process, or terminate these campaigns when a new Registry update is obtained.

Either option imposes significant additional processing burden and expense with almost no added benefit for consumers. In addition to the internal cost of creating suppression files to rescrub Registry updates against active telemarketing campaigns, telemarketing vendors making calls on our behalf charge us an additional $2 to $3 per thousand to process suppression files against our active telemarketing campaigns. Using a single typical month's Registry update of approximately 1 million records and an average 10-20 campaigns in process, as an example, we would have to pay approximately $60,000 more per month to our telemarketing vendors to have suppression files of updated Registry records processed against each telemarketing campaign in process. The language proposed below would at least allow companies that are already embracing the do-not-call process through more aggressive call suppression to largely follow existing campaign best practices without the need for processing additional suppression files.

Finally, we note that, realistically, the number of consumers signing up for the

Registry going forward will be relatively low. The Registry's success can be measured in part by the fact that over 55 million consumers had registered through 2003.[3] Because of this extremely high initial registration rate, it is foreseeable that future registration will plateau at much lower rates, and will most likely be dominated by consumers who move residences and register a new phone number. As a result, the beneficial impact on consumers of shortening the mandated suppression period from quarterly to monthly would actually be relatively small, further widening the disparity between any potential consumer benefit and the extremely high burden that such a rule would place on industry.

For the above reasons, we propose the following amendment to the Commission's Proposed Rule. We believe our proposed revision better balances industry's desire for cost-effective and timely processing with the privacy concerns of new registrants. We propose amending Section 64.1200 (c)(2)(i)(D) of the Rule as follows:

> Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, obtaining a version of the national do-not-call registry obtained from the administrator of the registry at least once every thirty-one (31) days and employing such version of the registry no more than thirty-one (31) days after it was obtained, and maintains records documenting this process; ***

Prior to adoption of the Registry, every state maintaining do-not-call lists recognized the need to allow a reasonable amount of time between the date that the state makes its updated do-not-call file available and the date when the updated file becomes effective. None of the state do-not-call requirements are as onerous with respect to the time for processing as the FTC's amended rule. We believe that the revised language offered above is a more viable standard because it strikes the proper balance between a consumer's right to have telemarketing calls stopped within a reasonable period of time and a telemarketer's ability to cost-effectively obtain the Registry and apply it across numerous and varied systems and files.

2. The Importance of Consistency between Commission and FTC Rules and Provisions of the Consolidated Appropriations Act of 2003

We respectfully urge the Commission to adopt our proposed alternative standard and to work with Congress and the FTC to establish it as the common standard for both agencies. As stated, having one consistent standard for accessing the Registry is extremely important. Inconsistent rules create an uneven playing field for businesses. For example, if the FTC's recently amended rule, TSR Section 310.4(b)(3)(iv), becomes effective on January 1, 2005, companies regulated by the FTC, including many companies within the Countrywide family, will pay at least three (3) times more to access and process the Registry than entities regulated by the Commission.

Inconsistency between Commission and FTC rules is also likely to cause

[3] FTC press release, February 13, 2004.

consumer confusion and frustration, leading to increased consumer complaints for companies and regulators, resulting in great burden and expense to all parties. Inconsistent rules also create uncertainty with respect to application of state law to intrastate calls. Many state laws adopt the Registry for purposes of compliance with state law or incorporate the Registry into the state's do-not-call file. Additionally, some of these laws specifically reference the current federal standard of three months. These state law issues further emphasize the importance of harmonization of the Commission and FTC rules.

While we support consistency between Commission and FTC rules, we do not support the Commission's proposal to amend the safe harbor provision within the rules implementing the TCPA to "mirror" the FTC's final rule amending the safe harbor provision within the TSR. We believe that the TSR, as amended, goes beyond the requirements of the Consolidated Appropriations Act of 2003,[4] by expanding its application from the obligation to obtain the Registry to both obtain and employ the Registry.[5] Given the absence of any Congressional hearings or mark-ups on the issue, we do not believe that Congress intended the law to impose any significant additional burden on telemarketers. Unfortunately, despite factual support to the contrary, the FTC concluded in its final rule that having to scrub call lists every thirty-one (31) days did not impose undue burden on telemarketers. While the FTC determined that it would not include any provision for a reasonable "grace period" to scrub call lists without explicit direction from Congress, we believe that the Commission has the authority to adopt Countrywide's proposed alternative standard, consistent with the Appropriations Act, and then work with Congress and the FTC to make the standard consistent by January 1, 2005.

Countrywide and the industry are working with members of Congress to clarify that the intent of the law was for telemarketers to access the Registry every thirty-one (31) days, not to both access and process the Registry every thirty-one (31) days. Meetings we have had with key staffers suggest that the absence of oversight from the Committees of jurisdiction on this new requirement may result in the imposition of unnecessary costs that produce few measurable benefits to consumers. We respectfully encourage the Commission to work with Congress in the same vein, with the goal of confirming Congress's intent that Registry access should be required every thirty-one (31) days, with an additional reasonable period permitted for the separate process of suppressing Registry names against each new telemarketing list. The ultimate goal, of course – and the outcome best serving both consumers and industry – is to legislatively

[4] "Not later than 60 days after the date of enactment of this Act, the Federal Trade Commission shall amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to ***obtain*** from the Federal Trade Commission the list of telephone number on the do-not-call registry once a month." Pub. L. No. 108-199, 188 Stat. 3.

[5] "The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §§ 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process. . ." TSR, section 310.4(b)(3)(iv).

enshrine this single, reasonable Registry access standard across the rules and statutes of the Commission, the FTC and all states with related laws of their own.

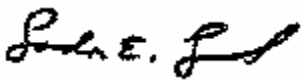
3. The Commission Should Adopt a Temporary Safe Harbor for Calls to Recently Ported Wireless Numbers

Countrywide supports the Commission's proposal to adopt a safe harbor provision for autodialed and prerecorded message calls to wireless telephone numbers that were recently ported from a phone line to a wireless service. Any safe harbor period for failing to scrub recently ported wireless telephone numbers must consider the processes established for obtaining such telephone numbers, whether such processes are through the Commission, common carriers, or other third parties. It is important to consider the extent to which such processes are automated and the fact that businesses must attempt to apply such lists across multiple systems and campaigns in process. The effort associated with processing a file of recently ported wireless telephone numbers is just as complicated as obtaining and scrubbing the do-not-call Registry. Therefore, it is reasonable for the safe harbor provision to be consistent. Specifically, the safe harbor provision should provide for obtaining recently ported wireless numbers at least once every thirty (30) days and employing such updates no more than thirty (30) days after the update was obtained. (Whether it's thirty (30) or thirty-one (31) days has no impact.)

4. Conclusion

Countrywide appreciates the opportunity to comment on this very important matter and would welcome the opportunity to discuss these comments further or answer any questions that the Commission staff may have regarding our views on this issue. Please feel free to contact me or Christine Frye, our Chief Privacy Officer, at 818.871.4856 with any questions about these comments.

Sincerely,



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